Reserved.

COURT NO.3

Criminal Misc. Application No. 992 of 2001.

Sri Rajendra Kumar Kulshrestha & others …Applicants.

Vs.

State of U.P. & others …Respondents.

…….

Hon'ble Irshad Hussain, J.

This petition under section 482 of the Code of Criminal Procedure (hereinafter for short 'Code') has been filed for quashing the summoning order and the charge-sheet submitted on 17.10.1997 filed in criminal case no.417 of 1999 (contained in Annexure-IV to the application).

Heard Sri A.D.Tripathi, learned counsel for the applicants, Sri Lokendra Dobhal, learned counsel for respondent no.3 and the learned A.G.A.

The charge-sheet in question was filed against the petitioners as well as Sushil Kumar, the husband of complainant-respondent no.3. As is evident, the husband of respondent no.3 has not come forward to challenge the propriety and legality of the said charge-sheet. The charge-sheet in question is the outcome of police investigation of the offences as alleged in the F.I.R. by the said complainant. It was alleged that soon after her marriage the husband and other family members of the husband who are the petitioners treated her with

cruelty and ill-treatment for and in connection with demand of extra dowry, illegally retained her ‘Stree-Dhan’ and have even dishonestly cheated her by delivery of part of her ‘Stree-Dhan’ to petitioners nos.5 and 6 who are the sisters of the husband of the complainant and one of them, petitioner no.5 is also a married woman and that despite demand her property was not returned to her when she started residing at Dehradun due to cruel treatment of the petitioners and husband.

Learned counsel for the petitioners submitted that all the family members of the husband have been falsely implicated and no specific overt act in regard to the offences alleged have been attributed to any of them and that in the totality of circumstances of the case it will be an abuse of the process of the court if the petitioners are subjected to criminal proceedings or trial on the basis of the charge-sheet in question. Learned counsel also argued that the petitioners have been roped in on account of prevalent tendency when a wife complains of her harassment or ill-treatment for and in connection with demand of extra dowry and there is no reliable material to prima facie prove the implication of the petitioners in the commission of the offences alleged. In support of the contention, learned counsel placed reliance on the observations of the apex court in criminal appeal in the matter of **Kansraj Vs. State of Punjab and others, 2000(41) ACC, 3-6 (S.C.).** The apex court in the reported case on the basis of the evidence of the prosecution drew an inference that family members of the husband were also roped in on ground of their being close relations of the husband who was held guilty of the offences relating to dowry death and it was observed that a tendency has developed for roping in all the relations of the in-laws of the deceased-wife in the matter of dowry death. The observation made cannot be of any help to the cause of the petitioners because at this stage court is not justified to sift material and come to any conclusion about the alleged false implication of the petitioners in the case. Further the documents submitted with the charge-sheet or police report under section 173 of the Code are not before the Court and on the basis of mere tendency as referred to above, it is difficult to come to the conclusion that the

petitioners have been roped in on ground of being close relations of the husband of complainant-respondent no.3.

Learned counsel for the petitioners also pressed into service a decision of the Rajasthan High Court in the matter of **Atma Ram Vs. State of Rajasthan and another, 1999 Criminal Law Journal, 4274** to bring home the point of view that at this stage also evidence can be scrutinized to know as to whether other relations of the husband have treated the complainant with cruelty or not. A reading of the reported judgment indicate that before the court the evidence collected during the investigation was also available and there were material on record to conclusively indicate that only the husband and no other family member had harassed the wife so as to attract criminal liability of dowry death etc. As stated above there is no material on record in the instant case as may prima facie indicate that the allegations of the F.I.R. against the petitioners are false and motivated. In view of above this decision is also of no help to the cause of the petitioners.

Learned counsel for the petitioners then placed reliance on a decision of Delhi High Court in the case of **Mrs. Rupender Kaur and another Vs. State and another, 2000, Criminal Law Journal, 1520** and submitted that the allegations of the F.I.R. that the petitioners have retained the 'Stree-Dhan' of the complainant is not supported by any evidence and the criminal proceedings against the petitioners are liable to be quashed. In the reported case the criminal proceedings were quashed in exercise of the power under section 482 of the Code on the ground that the complainant-wife had admitted in her letter that she had brought all her belongings with her when she left her matrimonial home. No such claim has been made by the petitioners with reference to any evidence or letter of the complainant-respondent no.3 and therefore there is no cogent ground to interfere with the charge-sheet in question.

As things stand, it is evident that the allegations in the F.I.R. are categorical that the complainant was treated with cruelty for and in connection with the dowry demand by the petitioners also and further that they retained the 'Stree-Dhan' with them when the complainant

left her matrimonial home. Other allegation of dishonest transfer of her ‘Stree-Dhan’ to petitioners nos.5 and 6 is also specific and at this stage there is no material as may apparently show that the allegations are inherently improbable and manifestly false. It is well settled that when exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon the enquiry as to whether the evidence in question is reliable or not or whether on a reasonable appreciation of it the accusation would not be sustained. It is the function of the trial court. Moreover the power to quash the criminal proceedings or the charge-sheet can be exercised in exceptional cases and in which category the instant case does not fall and therefore the question of interfering with the charge-sheet does not arise. It may also be pointed out that when the case shall be taken up for trial by the competent Magistrate and the charges would be framed, the petitioners shall have opportunity to point out to the Magistrate that on consideration the police report and the documents sent with it the charges against them are groundless and on consideration of the same, the Magistrate shall have power to discharge them by recording the reasons under section 239 of the Code. There can be no gain saying that at this stage the evidence or the material cannot be scrutinized or sifted to come to conclusion that only the husband of the complainant-respondent no.3 can be saddled with criminal liability in regard to the offences said to have been committed in relation to the said complainant-wife and the petitioners have been falsely roped in in the case. In view thereof, the petition is devoid of merit and the same is hereby dismissed accordingly. Interim order dated 07.09.2001 stands vacated.

(Irshad Hussain, J.)

22.04.2003./B.